HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

WPMS No. 351 of 2006
Sanjiv Kumar Pandey,

Vs.

The State Transport & others

Approved for reporting.

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~~Dot approved for reporting~~

Date of decision 10.04.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 351 (MS) OF 2006

Sanjiv Kumar Pandey,
S/o Sri Gopal Dutt Pandey,
R/o Rani Bagh, P.O. Haldwani,
Distt. Haldwani. .....Petitioner.

Versus

1. The State Transport Appellate Tribunal, Dehradun, through its Chairman.
2. The Regional Transport Authority, Kumaon, Kusum Khera, P.O. Haldwani, Distt. Nainital.
3. Sri Mohd. Shakir, S/o Sri Mohd. Kamil, R/o P.O. Ram Nagar, Distt. Nainital.
4. Sri Abdul Rehman, S/o Mohd. Usman, R/o Khatari, P.O.Ramnagar, Distt. Nainital. .....Respondents.

Mr. D.K. Agarwal, Advocate for the petitioner.
Learned Standing Counsel for the respondents no. 1 and 2.

Dated: 10.04.2006

Hon'ble Rajesh Tandon, J.

Heard Sri D.K. Agarwal, Advocate for the petitioner and Standing Counsel for the respondents no. 1 and 2. Both the parties have agreed that let the matter be disposed of at the admission stage.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 24.03.2006 passed by the Chairman, State Transport Appellate Tribunal, Dehradun as contained in Annexure No. 5 to the writ petition.

Briefly stated, that in respect of a route known as Haldwani-Kaladungi-Bazpur-Doraha-Kashipur which is a regular way established by the R.T.A., the petitioner has

claimed to be the existing operator on the basis of valid regular stage carriage permit no. 1020-K on the aforesaid route. The sole contention of the petitioner is that in the meeting of the R.T.A. held on 16.12.2004 at Haldwani presided over by the Commissioner, Kumaon Division, Sri Rakesh Sharma, there was Mr. T.R. Bhatt, a non-member outsider, who was sitting next to the Chairman. The said outsider actively participated in the deliberations of the R.T.A. and thereby influenced the orders of the R.T.A. to the extent that the official and non-official members were not allowed to open their mouth. By his presence, the objections were raised by the petitioner and other participants according to the case of the petitioner, the petitioner aggrieved by the said order dated 16th December, 2004 passed by the R.T.A. Kumaon, a Revision was preferred being Revision NO. 2 of 2005 before the State Transport Appellate Tribunal, Dehradun. In paragraph 11 of the memo of revision, the petitioner has already challenged that Sri T.R. Bhatt an outsider was sitting next to the Chairman and his activities have influenced the Commissioner Kumaon Division., Since this fact has already been mentioned in the grounds as well as ion the memo of revision, the application dated 21st March, 206 for impleading Sri T.R. Bhatt as a party is not required and as such the order dated 24th March, 2006 by which the application has been rejected needs no interference under Article 226/227 of the Constitution of India. While rejecting the application, the appellate Authority has rightly mentioned that the impugned order dated 16th December, 2004 is challenged in revision and the Court has to decide as to whether, the order dated 16th December, 2004 requires any interference by the revisional authority or not and as such the impleadment of any of the parties will not effect

the position regarding as to whether the meeting was validly held or not.

Section 68 Reads as under:-

68. Transport Authorities-*(1) The State Government shall by notification in the Official Gazette, constitute for the State, a State Transport Authority to exercise and discharge the powers and functions specified in sub-section (3), and shall in like manner constitute Regional transport Authorities to exercise and discharge through such areas (in this Chapter referred to as regions) as Transport Authority; the power and functions conferred by or under this Chapter on such Authorities;*

Provided that in the Union Territories, the Administrator may abstain from constituting any Regional Transport Authority.

(2) A State Transport Authority or a Regional Transport Authority shall consist of a Chairman who has had judicial experience or experience as an appellate or a revisional authority or as an adjudicating authority competent to pass any order or take any decision under any law and in the case of a State Transport Authority, such other persons (whether officials or not), not being more than four, and in the case of a Regional Transport Authority, such other persons (whether officials or not), not being more than two, as the State Government may think fit to appoint; but no person who has any financial interest whether as proprietor, emplloyueed or otherwise in any transport undertaking shall be appointed, or continue to be, a member of a State or Regional Transport Authority, and, if any person being a member of any such Authority acquires a financial interest in any transport undertaking, he shall within four weeks of so

doing, give notice in writing to the State Government of the acquisition of such interest and shall vacate office;

Provided that nothing in this sub-section shall prevent any of the members of the State Transport Authority or a Regional Transport Authority, as the case may be, to preside over a meeting of such Authority, as the case may be, to preside over a meeting of such authority during the absence of the Chairman, notwithstanding that such member does not possess judicial experience or experience as an appellate or a revisional authority or as an adjudicating authority competent to pass any order or to take any decisions under any law:

Provided further that the State Government may.-

(i) where it considers necessary or expedient so to do, constitute the State Transp0rt Authority or a Regional Transport Authority for any region so as to consist of only one member who shall be an official with judicial experience or experience as an appellate or a revisional authority or as an adjudicating authority competent to pass any order or take any decision under any law;

(ii) by rules made in this behalf, provide for the transaction of business of such authority in the absence of the Chairman or any other member and specify the circumstances under which, and the manner in which, such business could be so transacted:

provided also that nothing ion this sub-section shall be construed as debarring an official (other than an official connected directly with the management or operation of a transport undertaking) from being appointed or continuing as a member of any such authority merely by reason of the fact that the Government employing the official has, or acquires, any financial interest in a transport undertaking.

(3) The State Transport Authority and every Regional Transport Authority shall give effect to any directions issued under Section 67 and the State Transport Authority shall, subject to such directions and save as otherwise provided by or order under this Act, exercise and discharge, throughout the State, the following powers and functions, namely:-

(a) to co-ordinate and regulate the activities and policies of the Regional Transport Authorities, if any, of the State;

(b) to perform the duties of a Regional Transport Authority where there is no such Authority and, if it thinks fit or if so required by a Regional Transport Authority, to perform those duties in respect of any route common to two or more regions;

(c) to settle all disputes and decide all matters on which difference of opinion arises between Regional Transport Authorities; and

(ca) Government to formulate routes for plying stage carriages;

(d) to discharge such other functions as may be prescribed."

Similarly Section 90, which is a revisional Section provides as under:-

"90. Revision.-*The State Transport Appellate Tribunal may, on an application made to it, call for the record of any case in which an order has been made by a State Transport Authority or Regional Transport Authority against which no appeal lies, and if it appears to the State Transport Appellate tribunal that the order made by the State Transport Authority or Regional Transport Authority is improper or illegal, the State Transport Appellate Tribunal*

may pass such order in relation to the case as it deems fit and every such order shall be final:

Provided that the State Transport Appellate Tribunal shall not entertain any application from a person aggrieved by an order of a State Transport Authority or Regional Transport Authority, unless the application is made within thrirty days form the date of the order:

Provided further that the State Transport Appellate Tribunal may entertain the application after the expiry of the said period of thirty days, it is satisfied that the applicant was prevented by good and sufficient cause from making the application in time:

Provided also that the State Transport Appellate Tribunal shall not pass an order under this section prejudicial to any person without giving him a reasonable opportunity of being heard."

There is nothing under either Section 68 or Section 90 being necessary that the party against whom the revision has been preferred, should be made a party while deciding the case.

In ***Savitri Degvi Vs. District Judge 1999 (2) SCC*** *577,* the apex Court has held that there was no necessity of impleading the judicial officer, who disposed of the matter in the writ petition as it would cause unnecessary disturbance to the function of the Judicial Officer concerned and therefore, the practice of impleading the judicial officer has been deprecated.

Counsel for the petitioner on the other hand has submitted that he has a right to implead Sri T.R. Bhatt while filing the revision U/s 90 to the Motor Vehicles Act, 1988. A perusal of the memo of revision shows that the petitioner has already impleaded respondent no. 1 Regional Transport Authority Kumaon against which the revision has been

preferred and as such whether it was a duly constituted committee or not will be available to the petitioner while making the revision and therefore, it will not be necessary for the petitioner to implead Sri T.R. Bhatt by name.

Petitioner has preferred ***Santosh Kumar Vs. R.T.A. AIR 1985 Rajasthan page 130,*** where it has been observed by the Rajasthan High Court that the order made by the State Road Transport Authority or Regional Transport Authority can be challenged and the person aggrieved by an order can challenge the said order and according to the 3rd proviso a duty or obligation on the part of the tribunal is to give anybody a reasonable opportunity of being heard. Relevant observations are quoted below:-

"12. The above provision empowers the tribunal either suo motu or on an application made to it, to pass any order as it deems fit, if it finds, that the order made by the State Transport Authority or Regional Transport Authority is improper or illegal after calling for the record of the case. The first proviso prescribes a period of limitation that no application shall be entertained from a person aggrieved by an order of the State Transport Authority or Regional Transport Authority unless the application is made within a period of thirty days from the date of the order. It would appear from the first proviso that an application under S. 64A can be made by a person aggrieved by an order of the Regional Transport Authority. But the third proviso lays down a duty or obligation on the part of the tribunal and it is couched in negative and prohibitory language, which makes the provision imperative. It is mandatory for the tribunal to give to any person a reasonable opportunity of being heard, in case it passes an order, which may be prejudicial to that person, that is, the third proviso prohibits the tribunal to pass

an order under S. 64A prejudicial to any person without giving him a reasonable opportunity of being heard."

From the perusal of the observations of the Rajasthan High Court it is fully established that the emphasis has been given upon the reasonable opportunity of being heard to that person, if the order is passed.

Admittedly, the person, who is prejudicial in the present case will be the person, whose permits have been affected if such an order is set aside by the revisional authority before whom the order has been challenged in respect of the meeting dated 16th December, 2004. If the order is quashed naturally, the person affected will be whose permits have been cancelled and therefore, it is necessary to hear those persons on the principles of natural justice and also on the principles of that no one should be left unheard.

A perusal of the memo of revision shows that the petitioner has already impleaded Mohd. Shakir, Mohd. Rahman, whose permits are going to be affected and therefore, there will be no further requirement to implead any other person as a necessary party.

Of course it will be open for the revisional Court to enter into the controversy as to whether the meeting dated 16th December, 2004 was biased or independent meeting while deciding the case.

Subject to the aforesaid observations, writ petition is dismissed. No order as to costs.

(Rajesh Tandon, J.)

10.04.2006
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